

**REMARKS**

Claim 5 has been amended to delete the recitation of preventing disease. Further, claim 5 has been amended to recite that the fibrosis is pulmonary fibrosis as recited in claim 6, now canceled. Finally, claim 5 has been amended to use “consisting of” language to describe the active ingredient and to indicate that the active ingredient is in a pharmaceutically acceptable carrier. Support for this amendment is found in the specification for example from page 5, line 19 to page 8, line 2 and in the examples.

Accordingly no question of new matter arises and entry of the amendment is requested respectfully.

The Examiner is thanked for contacting the undersigned in order to try to place the case in condition for allowance. A Statement of Substance of Interview is submitted herewith summarizing the discussions.

Claim 5 is the only claim pending.

**A. Benefit of Prior Application**

In the paragraph numbered 1 at page 2 of the Office Action, the Examiner stated that if this application constitutes a continuation or division of prior application No. 10/030,314, filed January 10, 2002, and Applicants want to obtain benefit of the filing date of the prior application, Applicants should meet the requirements of 35 U.S.C. §120 and 37 C.F.R. §1.78.

37 C.F.R. §1.78 states that in order to obtain the benefit of the filing date of a prior application, the subject application must be amended within a certain period of time to contain a reference to the prior-filed application, identifying it by application number and filing date and indicating the relationship of the applications.

The undersigned submits that all of these requirements have been met by the amendment to the specification filed September 15, 2003. Nonetheless, the Examiner is thanked for bringing the matter to Applicants' attention.

**Claim Rejections - 35 U.S.C. § 112**

Claims 2-3 and 5-6 were rejected under 35 U.S.C. § 112, first paragraph.

The Examiner asserted that the specification, while being enabling for treating pulmonary fibrosis with the administration of sphingosine 1-phosphate, does not reasonably provide enablement for "preventing and/or treating a fibrosis" or "interstitial pneumonia, chronic hepatitis, hepatic cirrhosis, chronic renal failure or renal failure" with sphingosine 1-phosphate receptor agonist or sphingosine 1-phosphate.

Claim 5, the sole claim in the application, has been amended to delete reference to prevention and to recite treating pulmonary fibrosis.

Thus the Examiner is requested to reconsider and remove this rejection.

**B. Claim Rejections - 35 U.S.C. § 102**

Claims 2-3 and 5-6 were rejected under 35 U.S.C. § 102(b) as being anticipated by Spiegel (U.S. 5,712,262).

The Examiner asserted that Spiegel teaches use of sphingosine 1-phosphate in retarding apoptosis in degenerative diseases such as ischemic stroke.

For the following reasons, the rejection is traversed and/or overcome.

Spiegel teaches administering several different compounds to slow the process of cell death. Spiegel does not teach or suggest treatment of pulmonary fibrosis as recited in amended claim 5. Accordingly, Spiegel does not teach each and every element of the claimed method.

Thus, the Examiner is requested, respectfully, to reconsider and remove this rejection.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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**23373**

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